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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/530,691

08/12/2005

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04/27/2009

EXAMINER

PARADISO, JOHN ROGER

ART UNIT

PAPER NUMBER

3721

MAIL DATE

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04/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/530,691	Applicant(s) CORBETT, THOMAS ROBERT	
	Examiner John Paradiso	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Request for Continued Examination

1. The request filed on 4/17/2009 for a Continued Examination (RCE) under 37 CFR 1.114 based on parent Application No. 10/530,691 is acceptable and a CPA has been established. An action on the CPA is attached.

Claim Rejections

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-2, 5, 7-13, and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by MCCLUNEY (US 5322409).

MCCLUNEY discloses a method and apparatus for harvesting produce (21) so that an operator (20) is held by a body support element (18) (see MCCLUNEY Fig. 1 and column 2:37-61). The operator braces their feet against a crossbar (12) and can move in relation to the support structure thereby (see Fig. 3a and column 4:4-16). The range of movement can be inferred from the proportions of the human figure shown in Fig. 1, which can be assumed to be 1.5 – 2 m in height (or length, since the figure is illustrated prone).

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Regarding claim 2, a plurality of body support elements is shown in Fig. 1 of MCCLUNEY.

Regarding claim 5, Fig. 3a and 3b show the body support element moving when the user moves his body.

Regarding claim 6, the side frame members are being read as the claimed “pair of linear runners”.

Regarding claim 7, the support members can be adjusted to suit a user's body (see column 2:62 – 3:10).

Regarding claim 8 and 17, the straps can be adjusted to fit a particular user.

Regarding claim 9, the user can be seen lying prone (see Fig. 3a)

Regarding claim 10-12, the claimed “collection area” and “conveyor system” is being read on belt (36) (see Fig. 2b) and collection area in MCCLUNEY.

Regarding claim 16, a) Fig. 3a clearly shows a picker positioned in the support element; b) the harvester is driven along the rows of produce at a constant speed; c) the user picks the produce, moving his body to provide fore/aft, left/right motion which would temporarily increase/decrease the apparent speed of the user relative to the entire apparatus.

Regarding claim 18, the user places the produce on a conveyor system after it has been picked.

Regarding claim 19, the produce is subsequently removed from the conveyor for packing.

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4. Claims 4, 14, and 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCLUNEY.

McCLUNEY discloses an apparatus for harvesting produce, as described above.

McCLUNEY does not disclose sensors to monitor the direction of movement of the harvester.

Regarding claim 4, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of McCLUNEY by adding a motorized means for adjusting the position of the body support element in order to reduce the effort required by the users, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art.

Regarding claim 14-15, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add sensors to monitor the direction of movement of the harvester, as known from the admitted prior art, to the invention of McCLUNEY in order to provide extra safety for the user.

Examiner also notes that it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art.

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5. Claims 1-2 and 3-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over HARRIS (US 2378847) in view of MCCLUNEY (US 5322409).

HARRIS discloses a method and apparatus for harvesting produce (1) which is moved by means of rotatable members (2, 3). A body support element (4) supports a picker (see Fig. 1). While the apparatus is moving in a first direction (2), the support element can be moved vertically by means of a moving assembly (9, 11).

HARRIS does not disclose:

- a. the support element being movable relative to the support structure;
- b. the use of a motor to move the support element;

MCCLUNEY discloses a method and apparatus for harvesting produce (21) so that an operator (20) is held by a body support element (18) (see MCCLUNEY Fig. 1 and column 2:37-61). The operator braces their feet against a crossbar (12) and can move in relation to the support structure thereby (see Fig. 3a and column 4:4-16).

- a. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of HARRIS by using the support sling of MCCLUNEY in order to provide more flexibility for the operator.
- b. Fig. 1 of HARRIS shows the support member being moved manually by means of pedals and gears (12, 14, 18). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a motor to accomplish this motion in order to reduce strain on the user, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art.

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Regarding claims 2, a plurality of body support elements is shown in Fig. 2 of HARRIS.

Regarding claim 3, the range of movement can be inferred from the proportions of the human figure shown in Fig. 1, which can be assumed to be 1.5 – 2 m in height (or length, since the figure is illustrated prone).

Regarding claim 4, Fig. 1 of HARRIS discloses a motor (31) which is used to change the operator's height.

Regarding claim 5, Fig. 3a and 3b show the body support element moving when the user moves his body.

Regarding claim 6, the runners (6) of HARRIS are being read as the claimed “pair of linear runners”.

Regarding claim 7, the support member can be adjusted vertically by means of the motor (31).

Regarding claim 8 and 17, the straps can be adjusted to fit a particular user.

Regarding claim 9, the user can be seen lying prone (see Fig. 3a)

Regarding claim 10-12, the claimed “collection area” and “conveyor system” is being read on the chute (36) and collection area in HARRIS (see Fig. 3).

Regarding claim 14-15, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add sensors to monitor the direction of movement of the harvester, as known from the admitted prior art, to the combination of HARRIS and McCLUNEY in order to provide extra safety for the user.

Regarding claim 16, a) Fig. 1 clearly shows a picker positioned in the support element; b) the harvester is driven along the rows of produce at a constant speed; c) the user picks the

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produce, moving his body to provide fore/aft, left/right motion which would temporarily increase/decrease the apparent speed of the user relative to the entire apparatus.

Regarding claim 18, the user places the produce on a conveyor system after it has been picked.

Regarding claim 19, the produce is subsequently removed from the conveyor for packing.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add sensors to monitor the direction of movement of the harvester, as known from the admitted prior art, to the combination of MCCLUNEY and HARRIS in order to provide extra safety for the user.

Examiner also notes that it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art.

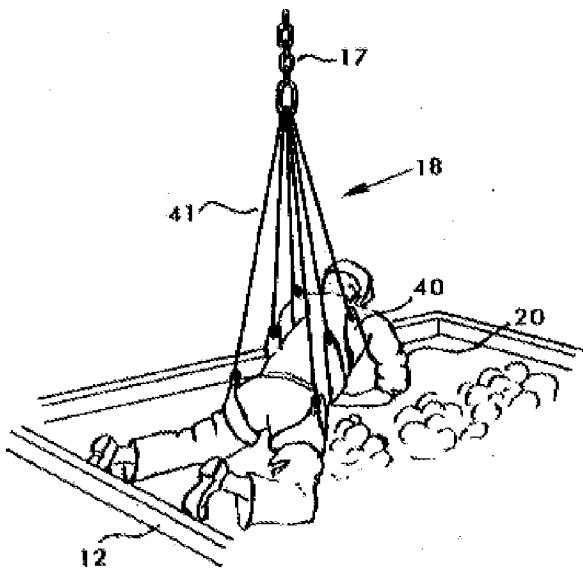
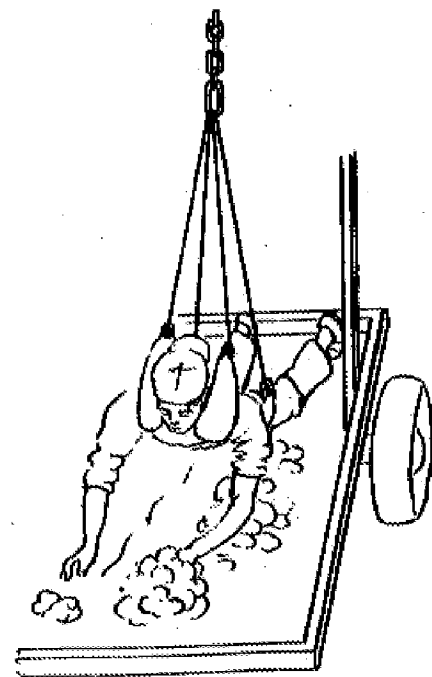
Response to Arguments

2. Applicant's arguments filed 4/17/2009 have been fully considered but they are not persuasive.

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3. Applicant states on page 7 of his Response that "Although it may be possible for the sling to be moved in the fore-aft direction of the harvesting apparatus, such movement is not described. Rather, only sideways movement is described. For example, McCluney talks about the pickers being able to "swing themselves out to reach fruit on the far side of plants." There is no suggestion of the pickers moving in the fore-aft direction."

However, Fig. 3a and 3b of MCCLUNEY clearly show that the user is suspended from a chain (17) and is therefore has no constraints on his movement. Further, the user can be clearly seen moving by bending or straightening his legs, thus providing movement fore and aft.

*FIG. 3a**FIG. 3b*

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4. Applicant states on page 7 of his Response that “Further, the description of the sling makes it clear that the picker's legs are supported, for example by leg loops. Such support of the pickers legs would significantly restrict - if not prevent movement in the fore-aft direction.”

However, while the user's feet are supported by leg loops, the leg loops only keep the user's feet anchored to the rear frame member (12) (see Fig. 3a), they do not inhibit the user's mobility or reduce his ability to bend or straighten his legs, thereby providing movement fore and aft.

5. Applicant states on page 7 of his Response that “Even if the picker's legs were not So supported, the distance through which a picker would be able to move himself, in the fore-aft direction, simply through flexing or bending of his legs would be very limited, for example of the order of 0.6m for a reasonably tall individual (less for someone shorter), considerably less than the 1 m distance now recited in currently amended Claim 1.”

However, absent any physical / anatomical verification of Applicant's estimate, Examiner maintains that the range of movement of an operator in MCCLUNEY can be inferred from the proportions of the human figure shown in Fig. 1, which can be assumed to be 1.5 – 2 m in height (or length, since the figure is illustrated prone).

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6. Applicant states on page 8 of his Response that “The addition of Harris does not remedy the shortcoming in fully meeting the claim as currently amended. Harris discloses only an arrangement in which the body support element can be raised and lowered, not one in which it can be driven backwards and forwards.”

However, the rejection above does not add HARRIS to remedy a deficiency in McCLUNEY. HARRIS is used in an alternative rejection and McCLUNEY is used to remedy a deficiency in HARRIS, as explained above.

7. Applicant states on page 8 of his Response that “In the prior office action, the claim was rejected as being anticipated by Harris. Applicant amended the claim in the prior Reply to require that the apparatus be used by selectively moving the body support element to temporarily increase or decrease the speed of movement of the body support element. Applicant's assertion that this element was not shown, suggested or rendered obvious by the applied art was not rebutted in this office action.”

However, this is explained in the rejection above:

“Regarding claim 16, a) Fig. 1 clearly shows a picker positioned in the support element; b) the harvester is driven along the rows of produce at a constant speed; c) the user picks the produce, moving his body to provide fore/aft, left/right motion which would temporarily increase/decrease the apparent speed of the user relative to the entire apparatus.”

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Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Paradiso. The examiner can normally be reached Monday-Friday, 9:30 p.m. – 6:00 p.m. (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada, can be reached at the number listed below.

Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Technology Center Receptionist.

/John R Paradiso/

Examiner John Paradiso: (571) 272-4466

April 23, 2009

Additional Phone Numbers:

Supervisor Rinaldi Rada: (571) 272-4467

Fax (Official): (571) 273-8300

Fax (Direct to Examiner) (571) 273-4466 (Drafts only)